उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(10)

मामला क्रमांक G.A. 1846/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT: ~~Kudha, S/o Samaru Khadiya~~,
Aged about 30 years,
R/o Bangaon, P.S. Bagbahar,
District Raigarh (M.P.) (now C.G.)

- Versus -

RESPONDENT: State of Madhya Pradesh (now Chhattisgarh),
Through the Superintendent,
Central Jail, Bilaspur (M.P.)
(now C.G.)

Present:

Mr. Abhay Tiwari, counsel for the appellant.

Mr. D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and**
Hon'ble Mr. Dhirendra Mishra, JJ.

ORAL JUDGMENT

(Delivered on 16th April, 2007)

L.C. BHADOO, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 24th June, 1999 passed by the Sessions Judge, Raigarh in Sessions Trial No.156/98, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

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2. Case of the prosecution, in brief, is that Manbudhan (PW-1) lodged the first information report Ex.P-1 in Police Station: Bagbahar to the effect that Parvati Bai, wife of Budhram, informed him that Kudha has committed the murder of her husband in the court yard of his house. He has been murdered on the ground that the accused/appellant was doubting the illicit relations between Budhram and his wife. Receiving this report, merg intimation No.4 was reduced into writing and thereafter, the first information report Ex.P-1 was registered. While in police custody, the accused gave memorandum Ex.P-6 regarding the Babool stick and in pursuance of that, he got recovered the stick under Ex.P-7. From the place of occurrence i.e. the court yard of the house of the accused, plain soil and bloodstained soil were seized under Ex.P-8. The body of Budhram was sent for post-mortem examination to Community Health Centre, Lailunga where Dr. Shailendra Upadhyay (PW-7) conducted post-mortem and opined that the cause of death is comma due to compression of brain due to subdural and intradural haemorrhage due to head injury, the death was homicidal in nature. He prepared the report Ex.P-10. After giving notice to the Panchas, inquest (Ex.P-12) on the body of Budhram was prepared by the Investigating Officer.

3. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Dharamjaigarh, who in turn, committed the case to the Sessions Judge, Raigarh, where the prosecution examined eight witnesses at the trial in order to establish the charge. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in

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~~the prosecution evidence and stated that he is innocent, he has~~ been falsely implicated in the crime.

4. Learned Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused/appellant as aforementioned.

5. We have heard Mr. Abhay Tiwari, learned counsel for the appellant and Mr. D.K. Gwalre, learned Additional Public Prosecutor on behalf of the State/respondent.

6. Mr. Abhay Tiwari has not disputed the homicidal death of Budhram. Moreover, from the evidence of Manbudhan (PW-1) before whom the accused made extra judicial confession, as also from the evidence of Dr. Shailendra Upadhyay (PW-7) who conducted post-mortem on the body of Budhram has stated that there was fracture on right parietal & occipital bones, the death was on account of subdural & intradural haemorrhage and the death was homicidal in nature, it is established that the death of Budhram was homicidal in nature.

7. As far as involvement of the accused/appellant in the crime in question is concerned, accused Kudha made extra judicial confession before Manbudhan (PW-1). Manbudhan (PW-1) is Village Kotwar. He has stated in his evidence that the accused came to his house and said that he has attacked the deceased as a result of which he died, that too in his house. Thereafter, he went to the house of the accused and saw Budhram lying dead in the court yard of the house of the accused. The above extra judicial confession made by the accused before this witness stands corroborated by the fact that the body of

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Budhram was found in the court yard of the house of the accused and no explanation for that has been offered by the accused that how the deceased sustained injuries in his house and died on account of that.

8. Therefore, from the above circumstances, it is established that the accused made extra judicial confession before Manbudhan (PW-1) which was voluntary and true, same is corroborated by the fact that the body of the deceased was found in the house of the accused, no explanation has been offered by the accused that how the deceased sustained injuries in his house. In the circumstances, as far as involvement of the accused in the crime in question is concerned, we do not find any illegality or infirmity in the judgment of the trial Court.

9. Learned counsel for the appellant argued that the prosecution has not been able to establish that the intention of the accused is to cause the death of Budhram.

10. On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

11. In order to appreciate the arguments, we have perused the evidence. From the evidence of Manbudhan (PW-1), it is established that the body of the deceased was lying in the house of accused Kudha and the accused was suspecting illicit relations between the deceased and his wife. The accused attacked the deceased with fists. Therefore, from the above facts, it cannot be inferred that the accused attacked the deceased with intention to cause his death. However, looking to the nature of injuries sustained by the deceased viz., occipital &

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parietal bones were fractured, it can safely be inferred that while the attacking the deceased on his vital organs, the accused had knowledge that he may likely to cause his death. In the circumstances, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

12. In the result, the appeal of the appellant is partly allowed. Conviction and sentence imposed upon the appellant under Section 302 of the I.P.C. are set aside, he is acquitted of the said charge, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for eight years. It is stated that the accused is in detention since 11-7-1998, thereby he is in detention for about more than eight years eight months. Therefore, the accused has already undergone the sentence, as such, he is directed to be released forthwith, if not required in any other case

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Soma